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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**IN RE:** §  
§  
**MERITAGE MORTGAGE CORPORATION** § **CASE NO. 09-30971-SGJ-7**  
§  
**DEBTOR** §

**FDIC'S MOTION FOR RELIEF FROM AUTOMATIC STAY**

**PURSUANT TO LOCAL BANKRUPTCY RULE 4001-1(b), A RESPONSE IS REQUIRED TO THIS MOTION, OR THE ALLEGATIONS IN THE MOTION MAY BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.**

**ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE STREET, ROOM 1254, DALLAS, TX 75242-1496, BEFORE CLOSE OF BUSINESS ON JUNE 21, 2011, WHICH IS AT LEAST 14 DAYS FROM THE DATE OF SERVICE HEREOF. A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY AND ALSO ON THE TRUSTEE AT 509 N. MONTCLAIR AVENUE, DALLAS, TX 75208. ANY RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE STAY IS TO BE CONTINUED.**

**To The Honorable Stacey G.C. Jernigan, U. S. Bankruptcy Judge:**

The Federal Deposit Insurance Corporation (“Movant” or “FDIC”) files this Motion for Relief from Automatic Stay (“Motion”) and would respectfully show the Court as follows:

1. Jurisdiction is based on 28 U.S.C. § 1334, 28 U.S.C. § 157, 11 U.S.C. § 362(d), and N.D. Tex. L.B.R. 4001-1.
2. The FDIC is a corporation and instrumentality of the United States of America, organized and existing under the laws of the United States of America pursuant to 12 U.S.C. § 1811 et seq. The FDIC brings this action pursuant to 12 U.S.C. § 1819(a) in its capacity as Receiver of NetBank, FSB.
3. On or before September 27, 2007, NetBank was a Federal Savings Bank with its principal place of business at 1015 Windward Ridge Parkway, Alpharetta, Georgia 30005.
4. NetBank’s deposits were insured by the FDIC.
5. Pursuant to Order No. 2007-43 issued by the Office of Thrift Supervision on September 27, 2007, the FDIC was appointed as Receiver of NetBank.
6. On September 28, 2007, the FDIC accepted its appointment as Receiver of NetBank in accordance with the Federal Deposit Insurance Act, as amended, by Receiver-In-Charge, Robert Schoppe. On the same date, NetBank's bank charter was revoked and all of its assets were placed in FDIC Receivership.
7. The FDIC has a substantial legal interest in the subject matter of this case because, as Receiver of NetBank and by express operation of law, the FDIC assumes all rights, titles, powers, privileges, and operations of NetBank. In this case, NetBank has failed and no longer operates as a financial institution. The FDIC has assumed complete control of NetBank and all of its assets as its Receiver. Once the FDIC became Receiver for NetBank,

all of its interests were transferred to the FDIC. See 12 U.S.C. § 1821(d)(2). As such, the FDIC now operates as NetBank's successor in interest. See 12 U.S.C. § 1821(d)(2)(A).

8. On February 17, 2009, Debtor, Meritage Mortgage Corporation, filed its Chapter 7 petition herein.
9. On or about July 1, 2004, NetBank entered into an agreement with the Debtor, as evidenced by that Inter-Company Credit Agreement ("Credit Agreement") attached hereto, identified as Movant's Exhibit 1, and made a part hereof by this reference.
10. NetBank secured the Credit Agreement on or about January 23, 2007, as evidenced by that Security Agreement ("Security Agreement") attached hereto, identified as Movant's Exhibit 2, and made a part hereof by this reference.
11. NetBank properly perfected its security interests by filing a State of Florida Uniform Commercial Code Financing Statement Form UCC-1 on January 24, 2007, a copy of which is attached hereto, identified as Movant's Exhibit 3, and made a part hereof by this reference.
12. NetBank further perfected its security interests by filing a State of Oregon UCC Uniform Commercial Code Financing Statement Form UCC-1 on January 26, 2007, a copy of which is attached hereto, identified as Movant's Exhibit 4, and made a part hereof by this reference.
13. Pursuant to the Security Agreement, the Debtor granted a security interest to NetBank in most of the Debtor's assets, including without limitation, *general intangibles*, which includes chose and/or things in action, including without limitation, cause(s) of action regarding mortgage-loan-related negligence and/or fraud, commercial tort claims, including without limitation, against appraiser(s), settlement agents and related companies, title underwriters, and/or any entity involved with a mortgage transaction funded by the Debtor relating to the following residential mortgage loans (collectively "CIA"):

Borrower	Principal Loss	Interest	Total Loss
Jason Peterson	\$480,589	\$228,279	\$708,868
Dionne Jackson	\$72,438	\$30,786	\$103,224
Eugene Carlisle	\$248,458	\$111,806	\$360,264
Orlando Calvin	395,000	\$171,035	\$566,035
Felicia Ikebude	\$218,376		\$218,376
Anthony Lewis	\$253,682		\$253,682
Mohammed Mamun	\$265,000	\$90,365.22	\$355,365.22
Total	\$1,933,543	\$632,271	\$2,565,814.22

14. The total amount of the CIA loss/damages due to FDIC is \$2,565,814.22. The CIA losses are not all recoverable in mortgage negligence/fraud lawsuits and there is a significant cost in legal fees involved so the actual value of the CIA losses is significantly less than \$2,565,814.22, however for the purposes of this action, the value of the CIA will be assumed to be \$2,565,814.22.
15. The amount due from the Debtor to the FDIC is \$14,092,218.85, as is reflected in the Debtor's Schedule F [DE 1 Page 22 of 69].
16. The FDIC lacks adequate protection of its interests in the CIA.
17. Cause exists for lifting the automatic stay imposed by § 362 of the Bankruptcy Code to permit the FDIC to enforce its rights under the Credit Agreement and/or Security Agreement as the funds due under the Credit Agreement have not been paid, inter alia, since well before the petition date.
18. The FDIC has been and continues to be irreparably injured by the stay of §362 of the Bankruptcy Code that prevents the FDIC from enforcing its rights in the CIA under the Credit Agreement and/or Security Agreement.
19. The Debtor lacks sufficient equity in the CIA and the CIA are not necessary to an effective reorganization by the Debtor.

20. The FDIC requests waiver of the stay imposed by § 362(a)(3) of the Bankruptcy Code.

WHEREFORE, Movant prays that, upon hearing the Court grant relief from the automatic stay as per § 362(d)(1) and (2) of the Bankruptcy Code, for cause on the basis that insufficient or no equity exists in the CIA, the subject of the Motion. The term “CIA” shall mean *general intangibles* including chose and/or things in action, including without limitation, cause(s) of action regarding mortgage-loan-related negligence and/or fraud, commercial tort claims, including without limitation, against appraiser(s), settlement agents and related companies, title underwriters, and/or any entity involved with mortgage transactions funded by the Debtor relating to the following residential mortgage loans; Jason Peterson, Dionne Jackson, Eugene Carlisle, Orlando Calvin, Felicia Ikebude, Anthony Lewis, Mohammed Mamun (“Loans”), that were pledged to NetBank by Debtor and are now owned by Movant. All of the same CIA is described in the Motion and is incorporated herein by reference for all purposes. Movant is not adequately protected in the CIA. Movant continues to be prejudiced and suffer economic loss to its secured interest in the CIA. Movant requests that the automatic stay be terminated, effective immediately upon entry by the Court, notwithstanding the 14-day stay required by Fed. R. Bankr. P. 4001(a)(3), as to the claim of Movant to permit Movant (or Movant’s future transferees, successors or assigns), to seek any or all of its statutory, contractual, or other available remedies, specifically that Movant (or such future transferees, successors or assigns), be permitted to pursue its cause(s) of action regarding mortgage-loan-related negligence and/or fraud and commercial tort claims, including without limitation, against appraiser(s), settlement agents and related companies, title underwriters, and/or any entity involved with the Loans. In the alternative, in the event that the automatic stay is not lifted, pursuant to 11 U.S.C. §362(e), Movant requests that Debtor be required to provide satisfactory

adequate protection to Movant. Finally, Movant requests all further relief to which Movant may be justly entitled.

Respectfully submitted,

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**Certificate of Conference and Certificate of Service**

I hereby certify that I have conferred with Elizabeth Grace Smith, attorney for Debtor, and she advised that the Debtor is not opposed to the relief requested in this Motion. On June 1 and June 3, 2011, I left a message for Trustee Daniel J. Sherman, who had not returned my calls as of the time of the filing of this Motion.

I hereby further certify that on June 3, 2011, the foregoing Motion was forwarded to all interested parties as listed on the attached service list via electronic transmission, or via regular first-class mail, postage prepaid, on June 6, 2011.

/s/ Sam E. Taylor, Jr.  
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Label Matrix for local noticing

0539-3

Case 09-30971-sgj7

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2421 W. Peoria Ave., Suite 210  
Phoenix, AZ 85029-4944

Wells Fargo Home Mortgage, Inc.  
CO Matthew Fairless  
Hazelwood & Weber LLC  
200 North Third Street  
St. Charles, MO 63301-2813

Wisconsin Dept. of Revenue  
PO Box 930208  
Milwaukee, WI 53293-0208

Daniel J. Sherman  
509 N. Montclair  
Dallas, TX 75208-5450

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Elizabeth Grace Smith  
Law Offices of Elizabeth G. Smith  
6655 First Park Ten, Suite 250  
San Antonio, TX 78213-4305

UST U.S. Trustee  
1100 Commerce Street  
Room 976  
Dallas, TX 75242-1011

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified  
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Greater Cincinnati Water Works  
4747 Spring Grove Ave.  
Cincinnati, OH 45232-1986

Addresses marked (c) above for the following entity/entities were corrected  
as required by the USPS Locatable Address Conversion System (LACS).

Cynthia Fischer  
Lerner, Sampson & Rothfuss  
120 E. Fourth St., Suite 800  
Cincinnati, OH 45201-5480

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Barclays Capital Real Estate Inc.

(u)CitiGroup Global Markets Realty Corp.

(u)HomEq Servicing Corporation

(u)Americas Servicing Company

(d)Meritage Mortgage Corporation  
1601 Bryan Street, Suite 19034  
Dallas, TX 75201-3430

(u)Ann L. Wehener

(u)Robert N. Towne

End of Label Matrix  
Mailable recipients 153  
Bypassed recipients 7  
Total 160